as not within the statute . . . . where the effect of its formation and enforcement upon interstate trade or commerce is in any event but indirect and incidental and not its purpose or object."

Regularity in the business sought to be adjudged interstate commerce is another essential element which must be present in the conduct of the intercourse before the court will so act. This is but the result of natural reasoning and has always been adhered to by the courts in rendering their decisions.

In rendering judgment in the case of *International Text Book Co. v. Pigg, supra, Justice* Harlan, as quoted above, laid particular stress on the regularity and continuity of the appellant's business, and *Justice* Carroll, in the principal case, has strongly adhered to a like principle. Concerning this phase of the question, he said: "But we can hardly believe that, merely because a person in one State occasionally writes a letter to a person in another State, that may result in bringing about a contract between the parties, or the exchange of commodities, he can be said to be engaged in interstate commerce. . . . "

In conclusion, it may be said that the Kentucky Court considers three elements, at least, necessary to concur before such commerce can be adjudicated interstate, so as to bring the regulation thereof under the control of Congress. They are: First, the commerce must come from without the State; second, it must have a direct connection with the sale of goods; and, third, the commerce must be regular.

THE RIGHT OF A RESCUER TO RECOVER DAMAGES FOR PERSONAL INJURIES WHEN THE RESCUED HAS BEEN PUT IN DANGER THROUGH DEFENDANT'S NEGLIGENCE.

There is a widespread belief in the doctrine that, if A, seeing B placed in imminent danger by reason of C's negligence, goes to B's rescue and is injured thereby, C is liable to A in damages. It is often found necessary, however, to qualify in several fundamental and essential aspects, the sweeping effect of the rule as commonly stated.

In reviewing the cases, and in the examination of standard text writers, nowhere can be found the rule stated in the simple manner initially laid down, for among cases in point, opinions have been formed largely to decide limited phases of the doctrine and dicta on the general rule are often loosely expressed to aid the individual decisions.

In the carefully considered, and apparently the correctly decided, case of *Bracey et al. v. Northwestern Improvement Co.,* 109 Pac., 706, Chief Justice Brantly expresses the general rule to be that: "One who, observing the peril of another, *voluntarily* exposes himself to the same danger to save his life, may recover for any injury sustained in effecting the rescue, against the person by whose negligence the peril was brought about, *provided* the exposure is not made under such circumstances as to constitute rashness in the judgment of prudent persons."

In this case the plaintiff was non-suited for a fatal variance between the complaint and the proof offered, but the general doctrine stated by the learned Chief Justice upon the right of recovery in such cases was undisputed.

At the basis of the doctrine in question lies the accepted statement that "The law has so high a regard for human life that it will not impute negligence in an effort to preserve it." *Maryland Steel Co. v. McIney,* 88 Md., 482.

In *De Mahey v. R. R. Company,* 45 La. Ann., 1324, the court, taking into consideration the presumption against contributory negligence, ruled that, "A mother going to the aid of her child, which had fallen between two cars by reason of the defendant's negligence and who was herself injured, could not recover, as her negligence in allowing the child to wander to an improper part of the train was the proximate cause of the injury."

The general rule is inapplicable when the rescued person is placed in the dangerous situation by reason of the prior negligence of the person attempting the rescue. *R. R. Co. v. Leach,* 91 Ga., 419.

The question as to whether or not the plaintiff's conduct amounts to contributory negligence is always a question of fact

for the jury, which must consider the case in the light of evidence as to all circumstances surrounding the attempted rescue. *Wharton's Law of Negligence,* Par. 314.

One attempting to rescue another from imminent danger, thereby imperilling his own life, is not, as a matter of law, guilty of contributory negligence. *Saylor v. Parsons,* 122 Ia., 679.

The doctrine that one springing to the rescue of another placed in imminent peril by the defendant's negligence, is himself guilty of contributory negligence, is supported neither by principle nor authority. *Penn. Co. v. Langendorf,* 48 Ohio St., 316.

In considering plaintiff's conduct, the peculiar circumstances of the situation in which he is placed are natural and affecting elements. The length of time within which he must come to a decision, the usual alarm and excitement attendant upon such occasions, with the inevitable liability to mistakes, the best course to pursue, are all factors which cannot but influence the ordinary man toward a hasty and perhaps imprudent course of action. Any mistake at such a point is excusable in the light of his laudable desire to save human life, and it is the probable conduct of a reasonable man under such circumstances which furnishes the criterion for proper conduct. *Eckert v. Long Island R. R. Co.,* 43 N. Y., 402.

It is conceded that plaintiff's knowledge of the danger to be encountered is not an element to be weighed against him, and if his attempted rescue be made in good faith, in the belief that he could save the imperiled life, his cognizance of the probability of injury to himself is not to be considered as proving contributory negligence on his part. *Idem.*

Assuming that the plaintiff be found not guilty of contributory negligence, it is at the same time necessary that he prove negligence on the part of the defendant, toward the person rescued, or the person making the rescue after the attempt has begun, to permit of recovery. *Donahue v. Wabash and St. Louis Pacific R. R. Co.,* 83 Mo., 500. It must also be shown that there exists a causal relation between this proven evidence and the injury complained of. *Monson v. La France Copper Co.,* 39 Mont., 50. Finally, unless such evidence be proved and the causal relation shown, the

plaintiff fails to make out his case, although the evidence shows negligence on the part of the defendant in other respects. *Forsell v. P. and M. Co.*, 38 Mont., 409.

There seems to have arisen no case which, considered in light of the above discussion, is not to be governed by the following summary:

The law has so high a regard for human life that it will not impute negligence to an effort to preserve it and one who, attempting to rescue another from imminent peril, is not guilty of contributory negligence, although he thereby puts in danger his own life, whether he is aware of the danger or not, when such an attempt is made in good faith, in the belief that he could save the life of the person in peril and avoid injury himself, unless the attempt be made under circumstances amounting to rashness in the judgment of a man of ordinary prudence. Error in judgment at such a time will not defeat recovery.

THE CLASSIFICATION OF CITIES BASED ON THEIR POPULATION AS A PRIVATE, LOCAL, OR SPECIAL LAW UNDER THE CONSTITUTIONAL PROHIBITION.

In the case of *Wilson v. McKelvey*, 77 Atl. (N. J.), 94, the question arose as to the constitutionality of an Act of the Legislature creating a Board of Public Works in cities "now or hereafter" with a population of not less than 100,000 nor more than 200,000 inhabitants. The subject of special legislation is by no means novel, yet it is of peculiar interest because there is no unanimity of opinion among the states as to what essentials or elements determine this question. A great diversity of judgments, many conflicting, has been the result of trying to establish a definite rule as to what is special or local legislation.

It is not necessary in order to constitute a statute a public act that it should be equally applicable to all parts of the State. It is sufficient if it extends to all persons doing or omitting to do an act within the territorial limits described by the statute. *Holt v. Birmingham*, 111 Ala., 369. The distinction between general and special laws depends upon all attendant circumstances having regard to the effect rather than the form of the statute. *State v. Sayre*, 142 Ala., 641.